U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JUN 10 2013 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a high school science teacher for Since 2008, the petitioner has taught at Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of standardized test scores.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 13, 2012. In an accompanying statement, counsel stated that the petitioner's "petition for waiver of the labor certification is premised on her Master's Degree in Education (Curriculum Specialist) and more than fifteen (15) years of dedicated and progressive teaching experience."

Academic degrees and experience are elements that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A) and (B), respectively. Exceptional ability, in turn, is not self-evident grounds for the waiver. *See* section 203(b)(2)(A) of the Act.

Counsel also stated: "the importance of children's science education for the United States' national interest is well-recognized by the federal government." This assertion, and the existence of initiatives and legislation such as the No Child Left Behind Act (NCLBA), attest to the substantial intrinsic merit of science education, but it does not follow that a blanket waiver exists for science teachers.

In a personal statement, the petitioner described her credentials and her experience, but did not address the *NYSDOT* national interest test. Regarding work she undertook in North Carolina from 2004 to 2007, the petitioner stated:

> In my leadership role in the school's testing program, I devised a benchmark test to help the students succeed on the state's "End of Grade" summative assessment. . . . The test proved very efficacious, enabling teachers and supervisors to improve the science curricula throughout the whole county. . . . I am very proud to say that my benchmark test and item-analysis strategies are still used by the , according to of the North Carolina State Dept. of Education.

The petitioner did not indicate that her benchmark had an influence beyond , or that her subsequent efforts in have resulted in wider implementation. The petitioner did not submit objective, documentary evidence to establish the extent to which continue to use her benchmark test. co-chair of the stated in a letter: "The test [the petitioner] designed is still being used by some of the schools in ." The phrase "some of the schools" is ambiguous, and, as a official, it is not evident that would have first-hand knowledge of practices and policies in

letter is one of several from teachers, administrators, students, and parents of students at various schools where she has taught. These witnesses praised the petitioner's abilities as an educator, but did not indicate that the petitioner's work has had, or will continue to have an impact outside of the classrooms and local school systems that have employed her.

The director issued a request for evidence on August 25, 2012, indicating that the petitioner had not shown that her work has had impact or influence at a national level. In response, the petitioner described her credentials and indicated that she is "an excellent teacher . . . in a multicultural environment," able to use "both traditional teaching strategies as well as the assimilation of modern technology based instruction." The petitioner indicated that she is a versatile teacher, in the process of "completing the National Board Certification in teaching," and has "started the process of procuring [her] Admin I certification." These factors improve the petitioner's skills as a teacher, but

they do not address the *NYSDOT* standards for the national interest waiver. In terms of broader impact, the petitioner stated: "I want to conduct research experiments in special education, especially in the area of autism. . . . I plan to do my research based on the causes of autism. . . . However, I am only able to do this research if I get the Green Card." The petitioner has not claimed or documented any past history as an autism researcher. As stated previously, the petitioner cannot qualify for the waiver based on speculation about future plans, when the petitioner has no record of achievement relating to the planned future work.

The petitioner noted that "[t]he county cannot renew [her] H1 visa and cannot get [her] a Green Card." The petitioner refers, here, to debarment. The Department of Labor invoked the debarment provisions of section 212(n)(2)(C)(i) of the Act against owing to certain immigration violations by that employer. As a result, between March 16, 2012 and March 15, 2014, USCIS cannot approve any employment-based immigrant or nonimmigrant petitions filed by This debarment means that is, temporarily, unable to file its own petition on the alien's behalf, and thus explains why labor certification is not an option in the short term.

The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the alien will serve the national interest to a substantially greater degree than do others in the same field. *NYSDOT*, 22 I&N Dec. at 218 n.5. Any waiver must rest on the petitioner's individual qualifications, rather than on the circumstances that temporarily prevent from filing a petition on her behalf.

Counsel asserted: "The academic performance of each American student is weighed against the rest across the nation for each grade level by the United States Department of Education." Counsel stated:

> [T]he most tangible national benefit to be derived from a 'Highly Qualified Mathematics Teacher' is recreating a society of responsible and values-driven citizens including a highly productive and well-balanced work force that would translate the current recession adversely affecting the United States of America into a formidable economy again.

Counsel did not explain how the actions of one teacher would contribute significantly to nationwide social reform and economic recovery.

Counsel stated that the labor certification requirement is deficient because, for labor certification purposes, the Department of Labor considers a bachelor's degree, rather than a master's degree, to be the minimum educational requirement for a schoolteacher. (The petitioner was already working for when she earned her master's degree in December 2011, four months before she filed the

[1] The list of debarred employers is available online at http://www.dol.go (copy added to record May 17, 2013).

present petition.) Counsel contended that Congress set new standards by passing the NCLBA, which established the category of "highly qualified teachers."

Section 9101(23) of the NCLBA, 20 U.S.C. § 7801(23), defines the term "highly qualified" in reference to teachers. Sections 9101(23)(B) and (C) of the NCLBA require that a "highly qualified" teacher "holds at least a bachelor's degree." Section 9101(23)(B) of the NCLBA also refers to "highly qualified" teachers who are "new to the profession." Thus, neither the petitioner's master's degree nor her experience are required for "highly qualified" status under the NCLBA. Counsel, therefore, did not support the claim that the labor certification process frustrates the NCLBA's mandate for schools to employ "highly qualified teachers."

Counsel stated that another teacher received a national interest waiver, and asked that the present petition "be treated in the same light." Each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). While AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished service center decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Furthermore, counsel provided no evidence to establish that the facts of the instant petition are similar to those in the unpublished decision. Without such evidence, the assertion that both cases merit the same outcome is unwarranted. The only stated similarity is that the beneficiary of the approved petition is "also a teacher in ."

The petitioner submitted a printout of an August 30, 2012 news story from the web site of television station . The headline reads " named among nation's best schools." The article indicated that "is featured in a new book called ' ,' touting it as one of the best schools in the country." The record does not contain any other information about, or excerpts from, the book named in the article. The article does not mention the petitioner, and there is no evidence that the book gave the petitioner credit for standing.

The director denied the petition on December 20, 2012. The director acknowledged the petitioner's submission of witness letters, but found that the letters "are based on general premises and only praise the petitioner's dedications [*sic*] and diligence." The director found that the petitioner had not established the impact, influence, or national scope of her past work.

On appeal, counsel asserts that section 203(b)(2)(B)(i) of the Act does not contain clear guidance on eligibility for the waiver, and claims that Congress subsequently filled that gap with the passage of the NCLBA. Counsel notes that Congress passed the NCLBA three years after the issuance of NYSDOT as a precedent decision, and claims that "[t]he obscurity in the law that NYSDOT sought to address has been clarified," because "Congress has spelled out the national interest with respect to public elementary and secondary school education" through such legislation. Counsel, however, identifies no special legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them.

The assertion that the NCLBA modified or superseded *NYSDOT* is not persuasive; that legislation did not amend section 203(b)(2) of the Act. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to create special waiver provisions for certain physicians. Because Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*, counsel has not shown that the NCLBA indirectly implies a similar legislative change.

Counsel states:

> With respect to the E21 visa classification, INA § 203(b)(2)(A) provides in relevant part that: "Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the **national . . . educational interests**, . . . of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

Counsel, above, highlighted the phrase "national educational interests," but the very same quoted passage also includes the job offer requirement, *i.e.*, the requirement that the alien's "services . . . are sought by an employer in the United States." Counsel has, thus, directly quoted the statute that supports the director's conclusion. By the plain wording of the statute that counsel quotes on appeal, an alien professional holding an advanced degree is presumptively subject to the job offer requirement, even if that alien "will substantially benefit prospectively the national . . . educational interests . . . of the United States." Neither the Immigration and Nationality Act nor the No Child Left Behind Act, separately or in combination, create or imply any blanket waiver for teachers.

Counsel asserts that the benefit arising from the petitioner's work is national in scope because of the "national priority goal of closing the achievement gap." The national importance of "education" as a concept, or "educators" as a class, does not establish that the work of one teacher produces benefits that are national in scope. *See NYSDOT*, 22 I&N Dec. 217, n.3. A local-scale contribution to an overall national effort does not meet the *NYSDOT* threshold. The aggregate national effect from thousands of teachers does not give national scope to the work of each individual teacher.

Citing printouts submitted on appeal, counsel states: "The MSA [Maryland State Assessment] Reading results show that out of the 24 Maryland school districts ranked near the bottom at the 'All Student' level for each MSA-covered grade level." Counsel adds: "it is noteworthy that the updated Maryland Report Card shows that did not meet its Reading proficiency AMO targets." The petitioner has worked for since 2007, and thus had been there for a number of years before the administration of the MSA tests.

Counsel states that the petitioner "is an effective teacher in raising student achievement in STEM" (science, technology, engineering and mathematics) but cites no evidence to support that claim. The

unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if the petitioner had documented her "proven success in raising proficiency of her students," it does not follow that the petitioner has had an impact or influence outside of

Counsel contends that factors such as "the 'Privacy Act' protecting private individuals" make it "impossible" to compare the petitioner with other qualified workers. Counsel's contention rests on the incorrect assumption that the *NYSDOT* guidelines amount to little more than an item-by-item comparison of an alien's credentials with those of qualified United States workers. The key provision in *NYSDOT* is that the petitioner must establish a record of influence on the field as a whole. *Id.* at 219, n.6. To do so does not require an invasive review or comparison of other teachers' credentials.

Much of the appellate brief consists of general statements about educational reform and discussion of perceived flaws in the labor certification process. It is within Congress's power to establish a blanket waiver for teachers, "highly qualified" or otherwise, but contrary to counsel's assertions, that waiver does not yet exist.

It is evident from a plain reading of the statute that engaging in a profession (such as teaching) does not presumptively exempt such professionals from the requirement of a job offer based on national interest. Congress has not established any blanket waiver for teachers. Eligibility for the waiver rests not on the basis of the overall importance of a given profession, but rather on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.